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No. 91-1448

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1991

ANDREW C. PUTKA,
Petitioner,

vs.

FIRST CATHOLIC SLOVAK UNION OF THE UNITED STATES OF AMERICA AND CANADA, JOSEPH R. KRISTOFIK, THOMAS J. GUIDISH, CYRIL M. FERENCHAK, STEVEN G. LUCA, REV. CHARLES HAWKINS, GEORGE YAKUBISIN, ANDREW S. BENO, ANDREW MICEK, JOSEPH J. KRAJSA, EDWARD G. YUHAS, REGIS BREKOSKY, CHARLES M. TEREK, STEVE YUSKO, MICHAEL RAGAN AND MICHAEL DOBIS,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondents disagree with Petitioner's formulation of the questions presented, because it mischaracterizes the record in this case. Respondents would state the questions presented as follows:

1. Whether Petitioner's expulsion from membership in an entirely private, voluntary fraternal organization, which involved no approval or participation of any sort by the State of Ohio, can form a basis for a claim under the U.S. Constitution.

2. Whether the Ohio courts' application of the common law doctrine of qualified privilege raises any question of federal law.

RULE 29.1 STATEMENT

Respondent First Catholic Slovak Union of the United States of America and Canada has no parent corporations and no subsidiary corporations other than wholly-owned subsidiaries.

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TO THE SUPREME COURT OF OHIO

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

Respondents First Catholic Slovak Union of the United States of America and Canada ("FCSU"), Kristofik, Guidish, Ferenchak, Luca, Hawkins, Yakubisin, Beno, Micek, Krajsa, Yuhas, Brekosky, Terek, Yusko, Ragan, and Dobis (collectively, "Respondents") oppose the petition for certiorari. Petitioner Andrew C. Putka claims (1) that his expulsion from a non-profit fraternal organization violated the free speech and due process clauses of the United States Constitution and (2) that certain publications in the FCSU's weekly newspaper were defamatory and not protected by the common law qualified privilege.

Both assertions are incorrect. As the Ohio Court of Appeals held, no constitutional protection attaches to actions which are wholly private; and the common law qualified privilege protected the publications. Petitioner seeks to have this Court sit as a court of error on matters purely of Ohio law. This the Court should not do: the petition should be denied.

COUNTERSTATEMENT OF THE CASE

A. Statement of Facts

The FCSU is a fraternal benefit society first incorporated in Ohio in 1892. Amended Complaint, ¶1. It provides death and disability benefits for its members and seeks to promote the spiritual and temporal welfare of its members within the Roman Catholic faith. Appendix to Petition for Writ of Certiorari (hereafter, "App. at _____") at 4. The FCSU has its own internal form of governance and Bylaws which all members agree to obey. App. at 8. The individual respondents were members of the FCSU's Board of Directors. App. at 2-3.

The Jednota, Inc. Reorganization

In March, 1986, the Board of Directors of the FCSU authorized the creation of subsidiary corporations (the "reorganization"), as a response to certain tax-related concerns. App. at 4-5. As of September 29, 1986, the FCSU organized Jednota, Inc., a wholly-owned subsidiary holding company, and three subsidiaries thereof. The Ohio Department of Insurance (the "Department of Insurance"), which by statute oversees certain aspects of the FCSU's operations, approved the reorganization. App. at 5-6.

The Complaint to the Ohio Department of Insurance

On or about May 12, 1987, the Reverend Stephen Furdek District of the FCSU sent a formal complaint to the Department of Insurance concerning the reorganizations. App. at 15. Petitioner Putka was one of the complainants, and though he now claims to have been acting solely as a lawyer, Petition For Writ of

Certiorari (hereafter, "Pet. at _____") at 24, the Department of Insurance specifically identified him as a complainant. Before filing the complaint with the Department of Insurance, Putka failed to bring the subject of the complaint before the FCSU, as is required by Section 16.11 of the FCSU Bylaws. App. at 7.

The Department of Insurance undertook an extensive investigation of the allegations of Putka's complaint. On December 15, 1987, a Report of Investigation was issued by the Department of Insurance. That report found that

> Neither the evidence presented by the complainants, nor the evidence developed in the Department's investigation warrants proceeding with a show cause hearing pursuant to Ohio Revised Code Section 3921.26.

App. at 6. It concluded that "nothing in this investigation warrants reconsideration of the determinations made by the Department" when the reorganization plan had originally been submitted to the Department of Insurance for review in 1986.

Putka's Expulsion

In February, 1988, Putka and two other Furdek District members were formally charged with violations of the FCSU Bylaws. App. at 6-7. At the Annual Board of Directors Meeting held on March 23, 1988, the Board found, among other things, that Putka and the two others had violated several FCSU Bylaw provisions in connection with their attack on the reorganization. Accordingly, the Board unanimously resolved that Putka and the two others be expelled from membership in the FCSU. App. at 7.

The Appeal to the FCSU Supreme Court

Putka appealed the decision of the Board of Directors to the Supreme Court of the FCSU. App. at 8. After oral argument, consideration of briefs, and several hours of deliberation, the FCSU Supreme Court issued a written opinion, which held (1) that Putka had violated the FCSU Bylaws and (2) that his expulsion was "therefore, proper and in accordance with the F.C.S.U. Bylaws." The Supreme Court revised the penalty imposed on Putka from expulsion to a one-year suspension. App. at 8. Thus, the FCSU Supreme Court found that Putka's punishment was proper under the facts and governing Bylaws but decided, in its discretion, not to expel.

The Appeal to the FCSU Convention

Putka appealed the FCSU Supreme Court's decision to the FCSU Convention, which was held from August 14-19, 1988, in Pittsburgh, Pennsylvania. The Convention consists of delegates elected by each FCSU branch and district, and is the supreme legislative and judicial tribunal in the FCSU. App. at 8.

A grievance committee was appointed to consider Putka's appeal and to make recommendations to the entire Convention. App. at 8. Putka was requested to contact the grievance committee chairman, but he refused to do so. The grievance committee held three sessions to consider the expulsion, none of which Putka deigned to attend. *Id.* The grievance committee recommended to the Convention that the Board of Directors' decision to expel Putka be reinstated. The Convention voted to accept the recommendations of the grievance committee and to expel Putka from the FCSU, by vote of 281 to 192. *Id.*

Jednota

Jednota ("Our Union") is the official newspaper of the FCSU. App. at 6. The FCSU Bylaws *require* that all official communications be published in *Jednota;* that "reports and information necessary to promote the welfare of the [FCSU]" be published, *Bylaws*, section 7.05(g); and that all proceedings of the FCSU Supreme Court be published, *id.*, section 7.08(d). The four publications which Putka alleged were defamatory, Amended Complaint, paragraph 14, were all published in accordance with the FCSU Bylaws. App. at 26.

B. Course of Proceedings and Disposition Below

Petitioner filed this action in July, 1988, alleging various claims related to his expulsion from membership in the FCSU. Petitioner amended the complaint in December, 1988 to recite claims for "disregard" of his rights under the FCSU Bylaws and of unspecified rights under the "laws and Constitution of Ohio," Amended Complaint, paragraph 11, intentional infliction of emotional distress, *id.*, paragraph 12, and defamation, *id.*, paragraph 14. The amended complaint made *no* claim under the U.S. Constitution or other federal law. The *only* reference to federal law is in the prayer, where petitioner requested, *inter alia*, an "injunction enjoining" Respondents from depriving Petitioner "from . . . exercising his rights under the Bylaws of the FCSU and secured to him by the laws and Constitution of Ohio and of the United States."

On December 12, 1989, the Cuyahoga County Court of Common Pleas granted defendants' motion for summary judgment as to all claims, and Putka appealed. The Eighth District Court of Appeals affirmed the grant of summary judgment in all respects, on August 15, 1991, App. at 2-28. The Ohio Supreme Court dismissed Petitioner's appeal for lack of a substantial constitutional question, App. at 1.

ARGUMENT

I. Petitioner's Expulsion From Membership Was Entirely Private, There Was No State Action and Therefore Petitioner Cannot Claim Constitutional Protection in Connection Therewith.

Petitioner simply has no business being in this Court, because the action he complains of was entirely private, and, for that reason, he cannot claim violation of any federal constitutional provision. Petitioner's argument to the contrary proceeds thus: because the FCSU is "regulated, supervised and controlled in detail" by the Ohio Superintendent of Insurance, and because the Superintendent's approval was necessary for the reorganization plan, there was sufficient nexus between the conduct complained of and the State.

That argument was not made in the Ohio courts. First, there is no reference to federal law in the amended complaint except a generalized and gratuitous reference in the prayer. Petitioner's briefs in the Ohio Court of Appeals contain mere references to, *e.g.*, "the controlling laws of our land," Brief for Appellant at 9, 13, and his "right of free speech," *id.* at 18, 19. Those briefs did not reference the U.S. Constitution, the state action doctrine, or any cases addressing those issues. Virtually all the citations in those briefs were of Ohio cases.

In Ohio, it is necessary that assignments of error be specified, Ohio R. App. P. 16(A). Absent such assignments, they will not be considered on appeal. Ohio R. App. P. 12(A); *Pollock v. Cohen*, 32 Ohio St. 514 (1877), *syllabus* ¶1-2. Moreover, the Ohio Supreme Court will not consider errors not raised in the intermediate court, *Davis v. Hines*, 6 Ohio St. 473 (1856). And where the state's procedures require that assignments of error

be made or waived, this Court will require likewise. "[T]he state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law." *John v. Paullin*, 231 U.S. 583, 585 (1913).

Thus, Petitioner has waived his alleged Constitutional violations. But even if that were not true, his argument ignores this Court's long precedent on matters of state action. As this Court has held, "[t]he mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment," *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350 (1974). The inquiry, rather, "must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Id.* at 351. The purpose of that requirement "is to assure that constitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains," *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (emphasis in original).

There is no such nexus here. The "state action" alleged by Petitioner is attenuated indeed: the state approved the reorganization, which "provoked the concern and interest of" Petitioner, which led him to file a complaint with the Department of Insurance, which caused him to be expelled. Pet. at 19-20. However, the State did not have any connection with the expulsion, *which is the only conduct complained of.* (This lawsuit has never included a claim based on the reorganization—it included only claims based on Petitioner's expulsion.) The State did not approve, sanction, or participate in the expulsion in any way. It is

the conduct complained of, not the mere fact that defendant itself is regulated in some aspects, that can make for "state action," *e.g., Jackson v. Metropolitan Edison Co.*, 419 U.S. at 358; *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 176-77 (1972) (regulation cannot be said to make the state a partner in private club's enterprise; thus no state action).

Next, Petitioner reargues matters of state law already decided by the Ohio courts, Pet. at 23-38, and seeks to have this Court revisit the two allegedly "erroneous" bases for the decision of the Ohio Court of Appeals. Because there is no question of state action or other federal question, this Court need not and should not address those matters. (Even if the decision were erroneous, and it is not, this Court is not primarily concerned with the correction of errors in the lower courts. Absent other factors, error itself will not suffice for grant of certiorari, *see* R. Stern, E. Gressman and S. Shapiro, *Supreme Court Practice*, 221-22 (6th ed. 1986).)

Moreover, Petitioner's reargruments of state law are erroneous substantively. Consistent with Supreme Court Rules 15.1 (obligation of the Respondent to point out misstatements) and 15.3 (brief in opposition shall be as short as possible) Respondents will address them briefly.

Ohio courts give great deference to the rulings of internal tribunals of voluntary organizations:

> It is well established that courts will not interfere with the internal affairs of voluntary associations, except in such cases as fraud or lack of jurisdiction . . . . The decisions of the tribunals of an association with respect to its internal affairs will, in the absence of mistake, fraud, collusion, or arbitrariness, be accepted by the courts as conclusive. Moreover, it is held that the courts will

> not undertake to inquire into the regularity of the procedure adopted and pursued by such tribunals in reaching their decisions.

State ex rel. Ohio High School Athletic Ass'n v. Judges of the Court of Common Pleas of Stark County, 173 Ohio St. 239, 247 (1962). Before he or she is expelled, a member of a voluntary organization must have notice of the charges and an opportunity to defend against them, *Cheney v. Ketcham,* 5 N.P. 139 (Lucas Cty. C.P. 1897). However, the internal procedures applicable to expulsion of members need not mirror the procedures inherent in our civil or criminal justice system, *Ohio High School Athletic Ass'n,* 173 Ohio St. at 247; *Paddock Hodge Co. v. Grain Dealers' National Ass'n,* 18 Ohio App. 66 (Lucas Cty. 1921). *See also Vehec v. First Catholic Slovak Union,* No. 89-3869 (6th Cir. May 29, 1990), 1990 U.S. App. LEXIS 8705 (summary judgment affirmed in case involving legal claims virtually identical to those in this case; *following Ohio High School Athletic Ass'n*) (See Appendix to this Brief, A1-A11).

The Ohio Court of Appeals held that Petitioner "clearly was afforded all the essentials of due process," and that he had "failed to produce any evidence of mistake, fraud, or management activity in excess of corporate powers." App. at 20. The court further found that bylaw provisions such as FCSU Bylaw 16.11 (requiring exhaustion of internal remedies before resort is made to civil authorities) should be upheld under Ohio law. App. at 19-20. *See also Int'l Union of Steam and Operating Engineers v. Owens,* 119 Ohio St. 94, 98-99 (1928). The above described holdings of the Ohio appellate court involve matters relating exclusively to Ohio law, which should be dispositive here.

Finally, Petitioner argues that the state court's "imprimatur" on his expulsion allows this Court to review the underlying (though never before asserted) constitutional claims. Pet. at 40-45. That is not the law. Unlike *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464 (1918) and *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673 (1930), the two cases upon which Petitioner relies, this case involves no deprivation of notice and an opportunity to be heard. Both those cases involved anomalous circumstances in which the state court had deprived plaintiffs of existing remedies for enforcement of rights—in *Postal Telegraph*, by *res judicata*, and in *Brinkerhoff-Faris*, by denial of a newly-created right of relief. In contrast, the Ohio courts here denied Petitioner his requested relief on the merits because his claims were unquestionably unfounded under well-settled Ohio law. Because the state courts have the supreme power to interpret state law, *Brinkerhoff-Faris*, 281 U.S. at 682, and because the Ohio courts determined that, as a matter of state law, Petitioner had failed to raise a genuine issue of material fact to support his claims, he can make no constitutional claim.

II. Application of the Common Law Qualified Privilege In This Case Raises No Federal Question.

In his statement of the Questions Presented, and again in the body of his brief, Petitioner appears to argue that the Ohio courts wrongly afforded the FCSU a "constitutional" privilege, and that, in the context of this case, "damages for false and defamatory statements are not prohibited by the First Amendment." Pet. at 50. There are two fatal flaws in that argument. First, it was never presented to the Ohio courts; second, the Ohio courts did not rule on constitutional privilege, but on the common law qualified privilege.

Under Ohio common law, communications are protected by a qualified privilege when they are made "in good faith on any subject matter in which the person communicating has an interest . . . if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable . . ." *West v. People's Banking & Trust Co.*, 14 Ohio App. 2d 69, 72 (Washington Cty. 1967); *accord, Jacobs v. Frank*, 60 Ohio St. 3d 111 (1991); *Hahn v. Kotten*, 43 Ohio St. 2d 237, 244 (1975). That privilege is a venerable one. It arose before the development of First Amendment privileges and today exists independent of them, *see* W. Keeton, *Prosser and Keeton on The Law of Torts*, §115 (5th ed. 1984).

The Ohio Court of Appeals rested its decision on the common law privilege. Constitutional privilege was never addressed, and there was clearly independent and adequate state ground for the holding. Petitioner never argued, and does not argue here, that application of the privilege in this case was in any sense violative of federal constitutional protections. Thus, to ask, as Petitioner does, Pet. at 49-50, "whether the facts of the present

case are wholly within the First Amendment concerns expressed by this Court in *New York Times Co.* and its progeny" is simply a *non sequitur.* As a matter of *Ohio* law, the publications were privileged, and this Court will not disturb state rulings on state law. *Herb v. Pitcairn,* 324 U.S. 117, 125-26 (1945).

Furthermore, whatever argument Petitioner now makes under the U.S. Constitution was never made in Ohio. In the Court of Appeals, Petitioner *conceded* that the qualified privilege was applicable, but argued only that the publications in question had been "unnecessarily defamatory," App. at 24. Nor was any federal constitutional argument made as to the defamation claim in Petitioner's Memorandum in Support of Jurisdiction in the Ohio Supreme Court. This Court does not decide questions not raised in the lower courts, *Youakim v. Miller,* 425 U.S. 231, 234 (1976), and so should deny the petition on that ground alone.

Even if the defamation claim were appropriate for review here (and, involving no federal question, it is not), Petitioner makes no showing of the "actual malice" necessary to defeat the qualified privilege. In an Ohio qualified privilege case, plaintiff must show that the statements were made with knowledge of their falsity or with reckless disregard as to truth or falsity. *Jacobs v. Frank,* 60 Ohio St. 3d at 116. Petitioner refers to "the unrefuted evidence," Pet. at 48, but specifies none, and no wonder: two Ohio courts found no genuine issue of material fact on the issue of qualified privilege, and the third (the Ohio Supreme Court) found no reason to review that determination. For these reasons, the petition as to the defamation claim should be denied.

CONCLUSION

The Petition should be denied because Petitioner's expulsion involved no state action and thus no constitutional protection attaches; and because there is no federal question as to the defamation claim. Moreover, this case presents no "special and important reasons" why certiorari should be granted within the meaning of Supreme Court Rule 10.1. Accordingly, the petition should be denied.

Respectfully submitted,

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APPENDIX

[Filed May 29, 1990]

NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
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v.

FIRST CATHOLIC SLOVAK UNION OF THE UNITED STATES AND CANADA, JOSEPH R. KRISTOFIK, CYRIL M. FERENCHAK, STEVEN G. LUCA, and JOHN YENCIK,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BEFORE: KENNEDY and RYAN, *Circuit Judges*; and COOK, *Chief District Judge.*[1]

PER CURIAM: Appellant Joseph R. Vehec brought this action against his former employer, the First Catholic Slovak Union of the United States and Canada (FCSU), a non-profit fraternal benefit society; Joseph R. Kristofik, the society's president; Cyril M. Ferenchak, the society's treasurer; Steven G. Luca, a member of the society's board of directors; and John Yencik, a marketing consultant of the society. In his amended complaint, appellant asserted the following causes of action: breach of contract; malicious violation of state and federal constitutional rights to due process; malicious violation of the FCSU by-laws; intentional infliction of emotional distress; and defamation. The District Court granted appellees' motion for summary judgment on all claims. We AFFIRM the judgment of the District Court.

FCSU is a private, non-profit association whose members share a common religious and ethnic heritage. It is administered by various "supreme officers," including an executive secretary, in accordance with its own by-laws. In 1982, appellant was elected to serve a three-year term as executive secretary. As such, he received a salary and the use of living quarters and office space on the premises of the FCSU home office in Cleveland. His responsibilities included financial management and record keeping for the entire organization. In August of 1985, the regular convention of the FCSU re-elected him for a second term of office, to run until March of 1989.

---

[1] The Honorable Julian Abele Cook, Jr., Chief United States District Judge for the Eastern District of Michigan, sitting by designation.

Audits conducted in 1987 revealed various irregularities in Vehec's use of FCSU funds. The specifics of these were detailed in a letter dated August 7, 1987, from Luca to Kristofik. At its semi-annual meeting, held August 16-20, 1987, the FCSU board of directors considered the contents of the letter. Having been asked at that meeting to respond to the letter, Vehec prepared an answer, which was considered at a meeting of the executive committee held on September 22, 1987.

According to Kristofik, following that meeting, Kristofik, as the supreme president of the FCSU, informed Vehec by letter of the same date that Vehec was suspended without pay effective immediately until a special meeting of the board could be convened. On September 24, 1987, Kristofik told Vehec in person that Vehec was suspended and that he and his family had to vacate the premises at the FCSU headquarters. On November 3, 1987, the board of directors held a special meeting during which, by official vote, Vehec was terminated as executive secretary.

Vehec claims that Kristofik, accompanied by Luca and Yencik, discharged him as opposed to suspending him in September of 1987, and ordered him and his family to vacate their living quarters that same day. He alleges further that, despite the by-laws' requirement, he received no written statement of the charges against him which were to be considered at the November 3, 1987 meeting; that he received no notice of that board meeting; and that he was therefore not afforded the opportunity guaranteed him by the FCSU by-laws to appear and defend himself.

Vehec appealed the board's November 3rd decision by filing a notice of appeal with the FCSU supreme court on November 24, 1987. On January 9, 1988, after a hearing, that court entered an order upholding Vehec's termination as in conformity with the FCSU by-laws.

Vehec did not take what would have been, under the association's internal rules, the next and final appeal of that judgment—an appeal to the FCSU convention. He did, however, request that the FCSU supreme court reconsider its January 9th ruling. He added this request to his appeal of the board of directors' March 23, 1988 decision to expel him from membership in the FCSU. That court declined to do so, ruling on June 3, 1988 that this effort was barred by res judicata. Under FCSU's governing rules, this decision ended appellant's right to challenge the actions taken against him by the association's authorized decision makers.

In the months that followed, three articles appeared in the official FCSU publication, *Jednota*, discussing the above events. Two of these were written by Kristofik, as president of the FCSU, and one by Michael Ridilla, as president of the FCSU supreme court. The District Court noted that Vehec did not allege that these articles were circulated more broadly than to the FCSU membership, or that they were written by Kristofik and Ridilla in capacities other than as officials of this private association.

The District Court found that the FCSU is subject to the provisions of section 1702.34(B) of the Ohio Revised Code, and that a plain reading of that provision makes it clear that no state law contract rights arise under the provision of FCSU's by-laws. The court further found that even if Vehec's reliance on the by-laws were

not barred by this provision, his breach of contract claim would nevertheless be barred by Ohio's statute of frauds. The District Court also found that appellant's fourteenth amendment claim failed because he alleged no state action and no state action existed. Appellant also argued that FCSU violated the due process rights afforded him by the FCSU by-laws. The court noted that under Ohio law, in the absence of mistake, fraud, collusion or arbitrariness, the decisions of tribunals of voluntary associations must be accepted by the courts as conclusive. Because appellant produced no evidence demonstrating circumstances warranting judicial intervention, the court accepted the decision of the FCSU tribunals. The District Court also found that appellant failed to make out a claim for intentional or reckless infliction of emotional distress, and did not produce factual support for his claim of defamation. Therefore, the District Court granted appellees' motion for summary judgment.

Appellant first argues that the District Court erred in awarding summary judgment for appellees because appellant was "tried and condemned *in absentia* by the Board in violation of the due process provisions of the Bylaws." In response to this contention, the District Court responded:

> On the question of the extent to which any court, either state or federal, may review the decisionmaking procedures of private associations incorporated under Ohio law, the law is well-settled. In the absence of mistake, fraud, collusion, or arbitrariness, the decisions of the tribunals of such voluntary associations must be accepted by the courts as conclusive. *State ex rel. Ohio High School Athletic Association v. Judges of the Court of Common Pleas of Stark County*, 173 Ohio St. 239, 247, 181 N.E.2d 261, 266-67 (1962).

The court found that Vehec had not produced any evidence demonstrating circumstances warranting judicial intervention.

Appellant argues that the District Court misapprehended the meaning of the *Ohio Athletic Association* case because it failed to quote the following language from the opinion:

> Even more to the point is the following language . . .:
>
> > "The decisions of any kind of voluntary society or association in disciplining, suspending, or expelling members are of a quasi judicial character. In such cases the courts never interfere except to ascertain whether or not the proceeding was pursuant to the rules and laws of the society, whether or not the proceeding was in good faith, and whether or not there was anything in the proceeding in violation of the laws of the land."

State ex rel. Ohio High School Athletic Ass'n v. Judges of the Court of Common Pleas, 173 Ohio St. 239, 247, 181 N.E.2d 261, 266 (1962) (quoting 4 American Jurisprudence 466, section 27).

We do not believe the omission of this language indicates that the District Court misapprehended the Ohio court's holding. Considering this language as well as that quoted by the District Court, we agree with the court's finding that appellant did not produce any evidence demonstrating circumstances warranting judicial intervention.

We also agree with the District Court that appellant has not shown that FCSU's by-laws were violated. Appellant asserts that the power to permanently dismiss a supreme officer is granted exclusively to the board of directors by sections 9.04(e) and (f). These sections state

that the board has jurisdiction "to hear and pass upon all complaints, grievances or violation[s] of the Bylaws and to impose penalty as provided in Section 16 of these Bylaws,"[2] and may "[d]ismiss from office after due hearing and a trial, any supreme or local officer . . . who fails to perform his (her) duties, or violates any provision of these Bylaws." These sections do not grant *exclusive* authority to the board. In fact, the president, Kristofik, acted pursuant to his authority to dismiss officers for violations of the by-laws, granted by section 7.03(j). This section provides, in part:

> President is to preside at all meetings of the Supreme Officers and shall:
>
> . . .
>
> (f) Arrange to investigate any irregularities and misunderstandings existing in any branch. All reports received shall be submitted to the Board of Directors at their next meeting.
>
> . . .
>
> (j) Dismiss Supreme Officers, officers of local branches for violations of these Bylaws or orders of the Supreme President, with a right of appeal.
>
> . . .
>
> (m) Render decisions on all questions concerning the construction of Bylaws which shall be binding on all Officers, unless reversed by the Board of Directors or the Convention.
>
> . . .

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[2] Section 16.03(a) provides:

> When charges are preferred before the Board of Directors, the accused may be notified at least fifteen (15) days in advance of the time and place of the hearing and must receive a written statement of the charge against him (her).

> (o) With the approval of two-thirds of the Board of Directors, reprimand and for a serious offense, suspend any Supreme Officer for failure to perform his (her) duties.

Section 7.03 does not require a trial.[3] Thus appellant's argument that because he did not have a trial, the by-laws were violated, is without merit.

Section 7.03 does afford appellant a right of appeal. Appellant availed himself of this right. He filed a notice of appeal with the FCSU supreme court on November 24, 1987, and on January 9, 1988, after a hearing, the supreme court entered an order upholding Vehec's termination as in conformity with the FCSU by-laws. Appellant waived his right of further appeal to the FCSU convention by failing to appeal within the time period mandated by the by-laws. Thus appellees did not violate the by-laws. Further, appellant's argument that he was denied due process is without merit in light of these procedural protections. He was provided with notice and an opportunity to defend himself, and therefore he was not denied due process. *Normali v. Cleveland Ass'n of Life Underwriters,* 39 Ohio App. 2d 25, 31, 315 N.E.2d 482 (1974).

Appellant next argues that the District Court erred in finding that there was not an enforceable employment contract in effect at the time of Vehec's termination. Appellant argues that his election to the office of executive secretary created a legally binding contract between him and the FCSU under the terms and conditions of the by-laws. He argues that section 4.03 of the by-laws, entitled "Member Contract" states that "[t]he contract agreement between the Society and the

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[3] Section 16.03(b)(3) provides that no trial shall be necessary "whenever the Bylaws provide for . . . removal from office or expulsion or fine without trial or notice."

member shall contain . . . (3) Bylaws of the Society." This membership contract, however, is wholly unrelated to any employment contract appellant may have had with the FCSU. Appellant also argues that the proceedings of the convention that elected him as executive secretary were memorialized by written minutes, and that these minutes together with the by-laws are evidence of a contract. However, as the District Court found, the FCSU, as a non-profit corporation organized under the law of Ohio, is subject to the provisions of section 1702.34(B) of the Ohio Revised Code, which provides in part:

> (B) Unless the articles or the regulations otherwise provide, . . .
>
> . . .
>
> (2) Any officer may be removed, with or without cause, by the persons authorized to elect or appoint him without prejudice to the contract rights of such officer. *The election or appointment of an officer for a given term, or a general provision in the articles, the regulations, or the bylaws with respect to term of office, shall not be deemed to create contract rights* . . . .

Ohio Rev. Code Ann. §1702.34(B) (Anderson 1985) (emphasis added).

The by-laws of FCSU do not "otherwise provide." Therefore, no state law contract rights arise as a result of appellant's election.[4]

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[4] The District Court found that appellant's breach of contract claim would be barred by Ohio's statute of frauds as well. Appellant contends that corporate minutes can constitute a memorandum satisfying the requirements of the statute of frauds. He cites *Soteriades v. Wendy's of Fort Wayne, Inc.*, 34 Ohio App. 3d 222, 225, 517 N.E.2d 1011 (1986), for this proposition. The minutes in that

(Footnote continued on following page.)

Appellant next argues that the District Court erred in finding that no genuine issue of material fact existed with respect to appellant's intentional or reckless infliction of emotional distress claim and that appellees were entitled to judgment as a matter of law.[5] To be liable for this tort, the appellees must have "by extreme and outrageous conduct intentionally or recklessly cause[d] severe emotional distress" to appellant. *Yeager v. Local Union 20,* 6 Ohio St. 3d 369, 374, 453 N.E.2d 666, 671-72 (1983) (quoting Restatement of the Law 2d, Torts 73, section 46(1), comment d (1965)). The conduct must have been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 375. The Ohio courts have applied this standard with even greater stringency in employment actions. *Crawford v. ITT Consumer Fin. Corp.,* 653 F. Supp. 1184, 1192 (S.D. Ohio 1986). We agree with the District Court that the conduct complained of in the present case cannot meet these high standards.

Appellant's final argument is that the District Court erred in finding that there were no genuine issues of material fact regarding the defamation cause of action,

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(Footnote continued from preceding page.)

case, however, were much more detailed than those in the present case. In the present case, the minutes cannot be said to "contain the essential terms of the contract, expressed with such clearness and certainty, that they may be understood from the writing itself, or some other paper to which it refers, without the necessity of resorting to parol proof." *Kling v. Bordner,* 65 Ohio St. 86, 99, 61 N.E. 148 (1901).

[5] Appellant also argues that he is entitled to punitive damages because the alleged breach of contract amounts to an independent willful tort. Because we have found that no contract and therefore no breach exists in the present case, we need not reach this issue.

and that appellee was entitled to judgment as a matter of law. The publications in which the allegedly defamatory articles were printed are protected by a qualified privilege, because the author and the readers share "a common interest, and the communication is of a kind reasonably calculated to protect or further it." *Hahn v. Kotten*, 43 Ohio St. 2d 237, 244, 331 N.E.2d 713, 718 (1975). In order to recover, appellant must have demonstrated falsity and actual malice. We agree with the District Court that appellant failed to go beyond his pleadings to produce factual support for his allegation of actual malice. Appellant has not convinced us otherwise in his appeal.

Accordingly, we AFFIRM the District Court's order granting appellee's motion for summary judgment.